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ABSTRACT

This report assesses federal efforts to implement the Americans with Disabilities Act (ADA) during its first four years as law. The report begins by describing the politics and the players in the passage and implementation of the ADA and then discusses how technical assistance precedes enforcement of ADA. Complaints filed under the ADA and the effectiveness for the complaint process are reviewed. Findings of the report indicate that the federal bureaucracy has developed generally effective procedures and systems to perform its responsibilities to implement the ACT, the federal government has yet to enforce the ADA fully, and that limits on research and data collection impede the ability to evaluate implementation strategies and to assess the long-term impact of the ADA. Recommendations include: (1) Congress should retain the current statue without amendments; (2) Congress should establish minimal enforcement standards; (3) Congress should appropriate funds to the Civil Rights Division of the Department of Justice for a comprehensive ADA public awareness/education campaign; (4) the Administration should devise and carry out a comprehensive implementation plan; and (5) disability advocacy groups should monitor more aggressively the federal government's implementation and enforcement of the ADA. (Contains 56 references.) (CR)

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Federal Implementation of the Americans with Disabilities Act, 1991-94

Jane West

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Federal Implementation of the Americans with Disabilities Act, 1991-94

Jane West

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FOREWORD

The Milbank Memorial Fund is an endowed national foundation that commissions and makes available the results of nonpartisan analysis, study, and research on significant issues in health policy. The Fund disseminates ideas and information about these issues through conferences, pamphlets, books, and a quarterly journal.

In July 1991, on the first anniversary of the ADA, the Fund published *The Americans with Disabilities Act: From Policy to Practice*, a multiauthored work edited by Jane West, who summarizes her subsequent research on the implementation of the ADA by the federal government in the report presented here. In addition, a sequel to her earlier work, *Implementation of the Americans with Disabilities Act*, will be published jointly by the Fund and Blackwell Publishers. Eleven authors, many of whom contributed to the original ADA book, will examine various aspects of ADA implementation. The book will be available in 1995.

Samuel L. Milbank
Chairman

Daniel M. Fox
President

ACKNOWLEDGMENTS

This report assesses federal efforts to implement the Americans with Disabilities Act during its first four years as law. The sources of information for the report were interviews, documents generated by federal activities, and independent articles and studies. Because it constitutes a view from inside the Beltway, the report does not cover the many creative approaches taken by local communities to implement the Act. In addition, the problems of federal implementation are scrutinized more carefully than the achievements. Most persons interviewed agree that the federal government has implemented the ADA more effectively than it did Section 504 of the Rehabilitation Act in the 1970s, the ADA's predecessor legislation.

The following individuals contributed to this report, either through interviews, or by providing information or reviewing drafts. I appreciate their time and thoughts: Michele Adler, Statistician, Office of Disability, Aging, and Long-Term Care Planning, U.S. Department of Health and Human Services; Sherry Arnstein, Executive Director, American Association of Colleges of Osteopathic Medicine; Robert C. Ashby, Deputy Assistant General Counsel for Regulations and Enforcement, U.S. Department of Transportation; William Baranowski, Director, Office of Fair Employment Practices, U.S. House of Representatives; Andrew Batavia, Legislative Assistant, Office of Senator John McCain; Chris Bell, Partner, Jackson, Lewis, Schnitzler and Krupman; Peter Blanck, Professor of Law, Senior Fellow of Annenberg Program, College of Law, University of Iowa; Janet Blizard, Supervising Attorney, Public Access Section, U.S. Department of Justice; Barbara Bode, Executive Director, Council of Better Business Bureaus Foundation; Elizabeth Boggs; Ed Burke, Acting Director, National Council on Disability; David Capozzi, Director, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board; Tony Coelho, Chairperson, President's Committee on Employment of People with Disabilities; Maria Cuprill, Staff Director, House Subcommittee on Select Education and Civil Rights; Justin Dart, Jr., Former Chairperson, President's Committee on Employment of People with Disabilities; Curt Decker, Executive Director, National Association of Protection and Advocacy Systems; Gerben DeJong, Director of Research, National Rehabilitation Hospital Research Center; Janet Dorsey, Deputy Postmaster, U.S. Senate Post Office; Linda Dubroof, Acting Branch Chief, Domestic Services Branch, Domestic Facilities Division, Common Carrier Bureau, Federal Communications Commission; David Esquith, Rehabilitation Specialist, National

Institute on Disability and Rehabilitation Research, U. S. Department of Education; Carolyn Feis, Social Science Analyst, General Accounting Office, U. S. Congress; Merrily Friedlander, Acting Chief, Coordination and Review Section, Civil Rights Division, U. S. Department of Justice; Marilyn Golden, Policy Analyst, Disability Rights Education and Defense Fund; Gary Gross, Staff Attorney, National Association of Protection and Advocacy Systems; Laura Hall, Senior Analyst, Biological and Behavioral Program, Office of Technology Assessment, U. S. Congress; Paul Hearne, President, The Dole Foundation for Employment of People with Disabilities; David Helms, President, The Alpha Center; Judy Heumann, Assistant Secretary, Office of Special Education and Rehabilitative Services, U.S. Department of Education; Harriett Jenkins, Director, Office of Fair Employment Practices, U.S. Senate; Erica Jones, Executive Director, Pacific Disability Business Technical Assistance Center; Nancy Lee Jones, Legislative Attorney, Congressional Research Service, Library of Congress; John Lancaster, Special Assistant, President's Committee on Employment of People with Disabilities; Wendy Lechner, Legislative Representative, National Federation of Independent Businesses; Ruth H. Lusher, ADA Technical Assistance Program Manager, Public Access Section, Civil Rights Division, U. S. Department of Justice; Paul Marchand, Director, Governmental Affairs, The Arc; Peggy Mastroianni, Director, Policy Division, Americans with Disabilities Act Services, Office of Legal Counsel, Equal Employment Opportunity Commission; Susan Meisinger, Vice President of Government and Public Affairs, Society for Human Resource Management; Pat Morrissey, Vice President, Government and Regulatory Affairs, Employment Advisory Services, Inc.; Chris K. Olander, Executive Director, The JM Foundation; Stewart B. Oneglia, Former Chief, Coordination and Review Section, Civil Rights Division, U. S. Department of Justice; Anne Marie Pecht, Attorney Advisor, U. S. Department of Justice; Mark Pitzer, Attorney, Office of Chief Counsel, Internal Revenue Service, Department of Treasury; William E. Raines, Jr., Administrative Assistant to the Architect of the Capitol, U.S. Congress; Sharon Rennert, Attorney Advisor, Americans with Disabilities Act Services, Equal Employment Opportunity Commission; Susan Schruth, Acting Director, Office of Civil Rights, Federal Transportation Administration, Department of Transportation; Katherine Seelman, Director, National Institute on Disability and Rehabilitation Research, U.S. Department of Education; Kay Shriner, Editor, Journal of Disability Policy Studies,

Arkansas Research Training Center, University of Arkansas; Robert Silverstein, Staff Director, U.S. Senate Subcommittee on Disability Policy; Rosalyn Simon, Director, Project ACTION, National Easter Seals Society; Alexander Vachon, Legislative Assistant, Office of Senator Robert Dole; John Wodatch, Chief, Public Access Section, Civil Rights Division, U. S. Department of Justice; Pat Wright, Director of Governmental Affairs, Disability Rights Education and Defense Fund; Irving K. Zola, Professor of Sociology, Brandeis University; and two anonymous reviewers.

The federal government has done a great deal to implement the ADA during the first four years since enactment, but it lacks a comprehensive strategy for addressing enforcement, technical assistance, and public awareness.

Technical assistance has taken precedence over enforcement. Congress appropriated about $44 million for technical assistance by federal agencies coordinated by the Depart-ment of Justice (DOJ). Nevertheless, a small fraction of businesses, places of public accommodation, state and local government entities, and people with disabilities have been reached by these efforts.

Enforcement of the ADA by the resolution of individual complaints has three weaknesses: (1) the length of time it takes to process complaints at the Equal Employment Opportunity Commission (EEOC); (2) the fact that DOJ is not investigating every complaint it receives; and (3) the poor tracking of complaints by the Department of Transportation (DOT). EEOC had received 27,944 complaints under Title I by the spring of 1994. By late June it had resolved 43 percent of them, closing 80 percent either for administrative reasons or because "no cause" of discrimination was found. The backlog of pending complaints at EEOC has exceeded 85,000, and the average time required to process a claim is now 293 days. Charging parties sometimes request "right-to-sue" letters after initiating a complaint, preferring to proceed directly to court rather than wait for an investigation.

By late July 1994 DOJ had received 2,649 complaints about public accommodations and 2,714 about discrimination by state and local government. Forty percent (1,077) of the public accommodations complaints received were not even opened. Instead, because it has not had enough staff to investigate all complaints, DOJ has advised complainants that they may go directly to court.

The number and disposition of complaints received by DOT is unclear. Although DOT reported a total of 363 complaints from all sources in late July 1994, DOJ alone reported having referred 484 complaints to the agency.

The federal government has initiated 35 court actions and 13 friend-of-the-court briefs as a result of the ADA. DOJ initiated one "pattern or practice" case. Both EEOC and DOJ have projects underway intended to promote the utilization of alternative dispute resolution.

Other enforcement mechanisms include compliance reviews, approval of codes and plans, fines, and loss of federal funds. DOJ has developed a compliance review initiative for construction projects. DOT, in contrast, has yet to initiate compliance reviews. The Federal Transit

Administration (FTA) of DOT has received plans for key station accessibility and approved plans to provide paratransit, door-to-door transportation in vans or taxis. The Federal Communications Commission (FCC) has certified telecommunications relay services in all states. Federal agencies have not yet imposed financial sanctions on violators of the ADA. FCC has not levied any fines. Neither DOT nor other agencies that enforce Section 504 of the Rehabilitation Act have withheld federal funds.

The Protection and Advocacy (P & A) Systems, nonprofit organizations funded by the federal government to protect the rights of people with developmental and other disabilities, have initiated the ADA compliance campaigns in a number of states.

EEOC has taken the lead on policy development, issuing two sets of policy guidance: one on health insurance and one on preemployment inquiries and medical exams. EEOC will soon issue guidelines on the application of ADA to people with psychiatric disabilities.

Congressional committees have held no oversight hearings on the ADA. However, the General Accounting Office (GAO) and the Office of Technology Assessment (OTA) have published five reports. Congress has begun to make internal changes to bring about its own compliance with the law, yet there is no point of oversight or coordination in either body. Moreover, Congress has yet to adopt remedies and procedures for its own compliance in areas other than employment.

No broad-scale federal public awareness campaign is underway. Media reports of questionable lawsuits and costly modifications go unrebutted. National polls indicate that 41 percent of Americans are aware of the ADA; even among people with disabilities only 10 percent are aware of the law.

Evaluation research initiatives are rudimentary. Only $400,000 has been targeted for research on the effectiveness of ADA implementation. No federal agency plans to conduct routine surveys of people with disabilities to measure changes in status. No data collection mechanism is in place to determine how ADA-related tax code provisions have been used.

The author recommends the following actions on the basis of the information in this report.

Congress

1. Retain the current statute without amendment.
2. Establish minimal enforcement standards, including timelines for complaint processing and closure. Adequate resources should be allocated to EEOC, DOJ, and DOT to enable them to comply with these standards.

3. Appropriate funds to the Civil Rights Division of DOJ for a comprehensive ADA public awareness/education campaign. The campaign should be developed and coordinated with EEOC, DOT, FCC, Access Board, NIDRR, NCD, PCEPD, and other relevant federal agencies.
4. Designate an internal ADA coordinator for each body and provide for an independent assessment of progress.

The Administration

1. Devise and execute a comprehensive plan to fulfill ADA requirements that includes strong enforcement, technical assistance, and an aggressive public awareness campaign.

Executive Agencies

1. Ensure that the comprehensive plan is effectively achieved across the federal government.
2. Appoint an ADA coordinator in DOT to ensure internal coordination and accomplishment of ADA responsibilities and effective communication with other agencies and the public.
3. Evaluate all government funded and conducted technical assistance efforts and then develop a second generation of technical assistance to be part of the comprehensive implementation plan.
4. Devise a research agenda to (a) determine effective implementation techniques and strategies and (b) monitor the changes in status of people with disabilities.
5. Assign the U.S. Commission on Civil Rights or the National Council on Disability to monitor implementation of the ADA and routinely report to the President and the Congress.

Disability Advocacy Groups

1. Monitor more aggressively the federal government's implementation and enforcement of the ADA.
2. Seek greater public support for the goals of the ADA.
3. Study the implementation and impact of the ADA and propose a research agenda to the federal government.

Covered Entities

1. Publicize exemplary practices, procedures, industries, and businesses that are successfully carrying out the requirements of the ADA and solving problems.
2. Use national trade and professional organizations to solve problems and share information about effective mechanisms and strategies to make the ADA a reality.
3. Initiate local events to raise public consciousness and support.

COMMON ABBREVIATIONS USED IN THIS REPORT

ADA	Americans with Disabilities Act
ADAAG	Americans with Disabilities Act Accessibility Guidelines
ADR	Alternative Dispute Revolution
APTA	American Public Transit Association
BOMA	Building Owners and Managers Association
CAO	Department of Transportation, Consumer Affairs Office
CCD	Consortium for Citizens with Disabilities
CPS	Current Population Survey
DBTAC	Disability and Business Technical Assistance Center
DOJ	Department of Justice
DOT	Department of Transportation
DREDF	Disability Rights and Education Defense Fund
EEOC	Equal Employment Opportunity Commission
GAO	U. S. Congress, General Accounting Office
FAA	Department of Transportation, Federal Aviation Administration
FCC	Federal Communications Commission
FEPA	Fair Employment Practices Agency
FHA	Department of Transportation, Federal Highway Administration
FMLA	Family and Medical Leave Act
FTA	Department of Transportation, Federal Transit Administration
HHS	Department of Health and Human Services
IRS	Internal Revenue Service
ISTEA	Intermodal Surface Transit Efficiency Act
JAN	Job Accommodation Network
NCD	National Council on Disability
NECA	National Exchange Carriers Administration
NFIB	National Federation of Independent Business
NHIS	National Health Interview Survey
NHTSA	Department of Transportation, National Highway Traffic Safety Administration
NIDRR	National Institute on Disability and Rehabilitation Research
OPO	Equal Employment Opportunity Commission, Office of Program Operations
OSERS	Department of Education, Office of Special Education and Rehabilitative Services
OSHA	Occupational Safety and Hazards Act
OTA	U. S. Congress, Office of Technology Assessment
P&A's	Protection and Advocacy Systems
PCEPD	President's Committee on Employment of People with Disabilities
SHRM	Society for Human Resources Management
TRS	Telecommunications Relay Services

When President Bush signed the Americans with Disabilities Act (ADA) into law on the White House Lawn on 26 July 1990, he said, "Let the shameful wall of exclusion finally come tumbling down." Senator Tom Harkin (D-IA), chief Senate sponsor of the Act, called it the "emancipation proclamation" for people with disabilities.

But many listeners knew that passing a law would not eliminate discrimination against people with disabilities. "We must fight to make sure that the words in the law...become reality," said Congressman Steny Hoyer (D-MD), chief House sponsor of the ADA. Justin Dart, then chairman of the President's Committee on Employment of People with Disabilities (PCEPD), called the ADA "a promise to be kept."

The politics of health care reform has dominated the implementation of the ADA in the first two years of the Clinton Administration. President Clinton, celebrating its fourth anniversary in 1994, said that health care reform would finish the business of the ADA. A more cynical observer commented, "The Administration won't aggressively enforce the ADA in the midst of courting the business community for support on health care reform."

ADA implementation has also been caught in the politics of "unfunded mandates" on business and in state and local government. In April 1994 Senator Harkin warned that the ADA and other disability rights laws faced "unprecedented attacks" from the public and private sectors.

On the other hand, disability policy has long been a source of bipartisan pride. Commemorating the 25th anniversary of Senator Robert Dole's first disability speech in Congress, President Clinton declared in the spring of 1994, "For all our differences there is a common chord that unites us when we all are at our best." Dole noted that disability is "one area where there has been no politics, just people doing the right thing."

The ADA was the most controversial disability legislation ever enacted. The first four years since its enactment have been much less contentious. Disability groups and covered entities have been waiting for the federal government to establish implementation mechanisms and an enforcement posture, and they are also listening to discern public opinion. Meanwhile, disability interest groups, especially in Washington, have moved on to other priorities, most notably health care reform. Fifty percent of people with disabilities who were aware of the ADA expect it to make no difference (or a negative difference) in their lives.

The most highly publicized national confrontation in the ADA's first four years of existence centered on an application for a Medicaid waiver submitted to the federal government by the state of Oregon in 1991.

Disability interest groups denounced the waiver as discriminatory; Louis Sullivan, then Secretary of Health and Human Services, rejected the waiver because it was "based in substantial part on the premise that the value of life of a person with a disability is less than the value of life of a person without a disability." The Clinton Administration, under strong pressure from the Oregon congressional delegation, quickly negotiated a compromise that satisfied both the state and national disability interest groups.

Public Awareness and Public Opinion

Public awareness of the ADA is growing, but it remains limited. A 1991 poll commissioned by the National Organization on Disability and conducted by Lou Harris and Associates, Inc., found that only 18 percent of Americans were aware of the Americans with Disabilities Act. A 1992 Gallup poll found that 17 percent of businesses were not at all familiar with the ADA, 25 percent were familiar in name only, and 44 percent were somewhat familiar. A 1993 Harris poll determined that 41 percent of Americans were aware of the law. According to studies by GAO in 1993 and 1994, awareness of the ADA among business owners and managers increased considerably in just 15 months. Whereas the 1993 report found that 69 percent were familiar with the ADA, the 1994 report found that 92 percent knew about it. Of those who were informed about the ADA, the percentage who reported that they knew they were expected to remove barriers before the effective date of 26 January 1992 increased from 77 percent in January 1992 to 88 percent in April 1993. A 1991 survey by Lou Harris revealed that only 16 percent of people with disabilities were aware of the ADA; this figure increased to 40 percent in the firm's 1994 survey. The higher the education level, the more likely there was to be individual awareness of the ADA.

Public opinion about the ADA is mixed. For example, 92 percent believed more people with disabilities should have paid jobs. Fifty-six percent agreed that some expenditures were required to make the country more accessible. At the same time, there is some public sentiment that the ADA has "gone too far."

Executive Branch

Nine agencies in the Executive Branch are most heavily involved in implementing the ADA. Four of these have enforcement responsibilities mandated in the ADA itself: the Department of Justice (DOJ), the Equal Employment Opportunity Commission (EEOC), the Department of Transportation (DOT), and the Federal Communications Commission (FCC). The Civil Rights Division of DOJ is the lead agency, entrusted

with governmentwide responsibility for coordinating ADA implementation and technical assistance and enforcing the public accommodations (Title III) and state and local government (Title IIA) provisions of the law. EEOC enforces the employment requirements of the law (Title I) and is the lead federal agency on employment issues. DOT enforces the transportation requirements (Title IIB and parts of Title III). FCC oversees the telecommunications requirements (Title IV).

Two other agencies play mandated roles. The Architectural and Transportation Barriers Compliance Board (Access Board), a small independent agency, develops architectural, communication, and transportation accessibility guidelines that are adopted as standards and utilized in enforcement by DOJ and DOT. The Internal Revenue Service (IRS) of the Treasury Department administers the sections of the Tax Code that relieve covered entities of some of the financial burden for compliance with the ADA.

Three other agencies have substantial responsibilities. The National Institute of Disability and Rehabilitative Research (NIDRR), a component of the Office of Special Education and Rehabilitative Services in the Department of Education, provides technical assistance through regional centers and funds research. The President's Committee on Employment of People with Disabilities (PCEPD) engages in public education and advocacy and sponsors the Job Accommodation Network (JAN), a telephone technical assistance service established in 1974 to help employers seeking to accommodate people with disabilities. The National Council on Disability (NCD), an independent advisory agency, advises Congress and the President on disability issues, including ADA implementation.

Many people who helped to enact the ADA now hold positions in the federal government. These include David Capozzi, key lobbyist on the transportation provisions of the ADA, who left the National Easter Seal Society to become director of the Technical Assistance Division of the Access Board; Liz Savage, earlier a staff member of the Epilepsy Foundation working for the passage of the ADA and later lead trainer with DREDF under the EEOC/DOJ technical assistance contract, who subsequently joined the Department of Justice; and Sharon Rennert, another former staff member of the Epilepsy Foundation, who now provides ADA technical assistance at the EEOC.

At DOJ, longtime disability policy experts include John Wodatch, chief of the Public Access Section; Stewart Oneglia, former chief of the Coordination and Review Section; Merrily Friedlander, current acting chief of the Coordination and Review Section and former general counsel at the

Access Board; and Ruth Lusher, who headed the Access Board's Office of Technical Services during the ADA rulemaking and now manages the DOJ technical assistance program.

Moreover, the Administration reported in July 1994 that 44 individuals with disabilities had been appointed to federal leadership posts. Judith Heumann, a founder of the disability rights movement, became assistant secretary for the Office of Special Education and Rehabilitative Services (OSERS) within the Department of Education. NIDRR, a division of OSERS, is now directed by longtime disability advocate and researcher Katherine Seelman. Other people with disabilities who are political appointees are Howard Moses, formerly special assistant to the chairman at the EEOC, appointed as Heumann's deputy assistant secretary; Marca Bristo, national disability rights leader and president of Chicago's independent living center, Access Living, as chair of the National Council on Disability; Tony Coelho, former member of Congress and the original House lead sponsor of the ADA, as chair of the President's Committee on Employment of People with Disabilities; Susan Daniels, formerly with the Administration on Developmental Disabilities, as associate commissioner for disability in the Social Security Administration; and Paul Steven Miller, formerly of the Western Law Center of Disability Rights, as a member of the EEOC.

Few additional staff, however, have been added to federal agencies to permit them to meet their new ADA responsibilities. The Department of Justice is the only enforcement agency to add a significant number of additional staff. The Public Access Section of DOJ was created and assigned 34 staff to perform technical assistance, enforcement, and building code certification. At DOJ, an attorney in the Public Access Section has a caseload of 80 complaints. In the Coordination and Review Section, the average caseload for an investigator is 100 cases. The Access Board is the only other agency to add any staff (5 in all) to fulfill its ADA responsibilities. In 1994, almost half of the Access Board's staff (15 of 36) were dedicated to ADA matters.

A backlog of complaints at EEOC is largely the result of no staff increase for the additional workload caused by the ADA. The average investigator at EEOC has 90 cases per year. Investigators in field offices received only seven days of training on the ADA, a guidance manual for ADA investigations, and a technical assistance resources directory listing relevant local services and agencies. The Administration's FY '95 budget requests additional ADA enforcement staff for both DOJ and EEOC.

There is considerable interagency coor-

dination, although disability interest groups consider it to be inadequate. DOJ reports having held two meetings of all the agencies designated as investigators of Title II complaints to discuss general policy and substantive issues. Staff from DOJ, EEOC, the Departments of Education, Health and Human Services, and Labor meet monthly to discuss employment issues. DOJ staff meet periodically with Education staff to discuss nonemployment questions of policy and legal interpretation. Agencies exchange drafts of policy and legal documents for comment and routinely discuss enforcement issues. Overlapping jurisdictions remain a significant problem; in the area of employment as many as five separate agencies may have jurisdiction over one complaint.

DOT appears to be the federal enforcement agency with the most significant problems of coordination. At least five units within the department are involved in different aspects of ADA implementation, but no individual or office is responsible for the department's overall ADA authority. Some complaints that were referred to DOT from DOJ are unaccounted for. Moreover, a complaint filed with one branch does not appear to trigger an examination of a plan that is the responsibility of another. Employers have complained about lack of coordination between ADA agencies, the Department of Labor, which administers the Family and Medical Leave Act (FMLA), and the National Labor Relations Board.

The timely issuance of ADA regulations and the development of accessibility standards by federal agencies sharply contrasts with the history of ADA's predecessor legislation, Section 504 of the Rehabilitation Act. DOJ and EEOC met their required dates, the FCC was a few days late, and DOT was two months late. This left the IRS, which, as of July 1994, had reportedly drafted, but had still not issued, the required regulations for the Access Credit.

Most departments immediately issued their regulations in accessible formats, including braille and audiotape, except for DOT, which was slow to do so.

The Access Board continues to develop accessibility guidelines for enforcement agencies to use in their regulations. On 26 July 1991 the Access Board issued Sections 1-9 of the Americans with Disabilities Act Accessibility Guidelines (ADAAG), which were adopted by DOJ as enforceable standards in regulations for Title III of the ADA. On 6 September 1991 the Access Board issued Section 10 of ADAAG: accessibility guidelines for transportation facilities and vehicles. On the same day DOT adopted all ten sections in their ADA regulations. The Access Board is finalizing Sections 11 – 14 of ADAAG, which will address courthouses, prisons, public housing, public rights of way

(such as sidewalks, public toilets, and emergency call boxes), and detectible warnings. DOJ and DOT have issued a notice proposing to adopt these new sections as standards. Accessibility guidelines for children's environments, over-the-road buses, recreation and parks, and water transportation are scheduled for proposal in 1994 and final issuance in 1995.

The Congress

Four committees in the House of Representatives and one in the Senate have jurisdiction over the ADA, which is permanently authorized. In the Senate, it is the Subcommittee on Disability Policy of the Committee on Labor and Human Resources. The subcommittee's staff director is frequently called upon to advise other committees when ADA-related issues arise, notably when they concern health care reform.

In the House the ADA is under the jurisdiction of four authorizing committees and four of their subcommittees: the Subcommittee on Select Education and Civil Rights of the Committee on Education and Labor; the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary; the Subcommittee on Surface Transportation of the Committee on Public Works and Transportation; and the Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce.

Shortly after enactment of the ADA, the Subcommittee on Select Education was renamed the Subcommittee on Select Education and Civil Rights. Because of its jurisdiction over both the Rehabilitation Act and the ADA, the subcommittee has become a leader in ADA oversight in the House. Although its authority includes legislation outside the disability area as well, this subcommittee has jurisdiction over most of the same statutes that reside in the Senate Subcommittee on Disability Policy. Thus the two subcommittees are considered House and Senate counterparts and constitute the congressional homes for the ADA.

Other committees have responsibilities that are important for the implementation of the ADA. In the Senate, the Committee on Finance has jurisdiction over tax code provisions, including the access credit and the Section 190 deduction. In the House, this authority belongs to the Committee on Ways and Means. These busy committees have little time to give special attention to the access credit or the Section 190 deduction. Two appropriations subcommittees in each body are relevant to the executive branch agencies that administer the ADA. The subcommittees that provide funding for EEOC and the Department of Justice (Commerce, Justice, State, and Judiciary) and the subcommittees that provide funding for the Department of Education (Labor, Health

and Human Services, Education, and related agencies) have appropriated ADA technical assistance funds.

Interest Groups

Disability interest groups, organized as the Consortium for Citizens with Disabilities (CCD), worked for passage of the ADA. The Rights Task Force of CCD monitors federal agencies and lobbies Congress about ADA matters.

Key members of the task force are Paul Marchand, chair of CCD and director of governmental affairs for The Arc; Pat Wright, Director of Governmental Affairs, the Disability Rights Education and Defense Fund; Curt Decker, executive director of the National Association of Protection and Advocacy Systems; and Len Rubenstein, executive director of the Bazelon Center for Mental Health Law. Decker, Wright, and Rubenstein are co-chairs of the Rights Task Force.

TECHNICAL ASSISTANCE PRECEDES ENFORCEMENT

The ADA authorized federal agencies to provide technical assistance and required each enforcement agency to disseminate manuals within six months after issuing its regulations. The one-year delay between enactment and enforcement of the key provisions of the ADA allowed the federal government to begin technical assistance before its enforcement responsibilities began.

The Department of Justice proposed a governmentwide technical assistance plan, as mandated by the ADA, in December 1990. Although much of the DOJ technical assistance plan has been put into effect, some provisions of the agencies' 1990 plan have not. However, some activities not listed in the plan have been carried out. Section 504 of the Rehabilitation Act set a precedent for the technical assistance authorized under the ADA. In the late 1970s federal agencies spent $50 million over a three-year period on technical assistance to implement Section 504.

What the Agencies Do

Each agency provides technical assistance, but only four agencies have received specific appropriations to do so: NIDRR, EEOC, DOJ, and DOT. EEOC and DOJ have funded technical assistance through grants and contracts and have provided assistance directly. DOT has provided technical assistance primarily through Project Action of the National Easter Seal Society. From the time the law was enacted through FY '94, federal expenditures on technical assistance totaled almost $44 million. DOJ and NIDRR have each spent about $17 million; EEOC $5 million; and DOT, about $6 million dollars.

Agencies define technical assistance broadly. Federal agencies and recipients of their funds are developing and disseminating materials, running toll-free 800 numbers, providing training, advising on individual problem solving, making referrals to other agencies, and promoting public awareness through publications, press releases, and public service announcements. Federal funds have supported the production of videotapes, and the development of resource libraries, public forums, and curriculum modules.

The volume of technical assistance activities provided by federal agencies has been considerable. The Department of Justice disseminated over 6,000 documents electronically in the past year. DOJ has also sent mailings to 5.9 million businesses through the IRS. A mailing in the fall of 1994 will inform these businesses of DOJ's toll-free ADA Information Line. The ADA Information Line currently receives more than 80,000 calls a year. Through a grant, DOJ has created an ADA information file containing 33 ADA publications, which will be provided to 15,000 libraries around the

country. DOJ has placed ADA brochures in 7,600 grocery stores throughout the country serving about 120 million customers weekly. In addition, the agency has funded 35 organizations to provide technical assistance, and in July 1994 solicited proposals to assist architects and other design professionals, contractors, tradespeople, building inspectors, state and local historic preservation groups, staffs of legal services and public interest law centers, and professional mediators.

The EEOC speakers bureau has delivered over 2,300 speeches on the ADA, has distributed technical assistance manuals to 125,000 organizations and individuals, has written and disseminated more than one million brochures, and, like DOJ, has conducted a mailing to employers via the IRS. EEOC and DOJ jointly funded a $1.4 million contract to train 400 people with disabilities, who in turn will instruct others about their rights under the ADA.

NIDRR funds ten regional technical assistance centers, two National Peer Training Projects to educate associates and volunteers at independent living centers, and individuals with disabilities and their families about the ADA. Three Materials Development Projects create and test technical assistance and training materials and programs for use by the centers and the training projects. The organizations that carry out these projects and run the centers include six disability organizations, five business organizations, four universities, one labor union, and one state agency.

The centers provide people with disabilities, employers, and state and local government officials with information, training, technical assistance, and referrals to local sources of expertise. Each center covers a region comprising between four and eight states. The centers contract out funds to state and local affiliates to promote the capacity of local communities to implement the ADA. In the second year of operation, 1 October 1992 – 30 September 1993, the centers answered more than 61,000 telephone inquiries, provided 80,000 instances of technical assistance (70 percent to organizations required to comply with the ADA), made more than 10,000 referrals to other agencies, disseminated more than 500,000 ADA publications, and trained 63,351 people to work on various aspects of the ADA. Several NIDRR centers addressed special projects to ethnic minority communities and rural communities. NIDRR's materials development projects offer 59 publications with titles like *Model Plan for Implementation of Title I of ADA: From the Human Resource Perspective* and *Guide for Union Representatives*.

In the summer of 1994, NIDRR issued a new request for proposals for training about the ADA that targeted these priorities: inde-

pendent living centers, family service organizations, school districts, state and local ADA coordinators, minority and minority-language communities, and standards for accessible design. About $1.5 million is set aside for these projects.

Most of the projects funded by DOJ and NIDRR are run by groups representing either people with disabilities or organizations covered by the Act. Some of the grants from the DOJ went to disability organizations that worked to secure the enactment of the law. Many projects, particularly the NIDRR centers, are partnerships between disability and business organizations. DOT's major externally funded technical assistance effort, Project Action, works with the disability community and public transportation interest groups. Project Action funds local demonstration projects and provides technical assistance and training under a $2 million annual cooperative agreement with DOT.

Unlike the other agencies that enforce the ADA, DOT transfers a great deal of money to agencies of state and local government. Some argue that this offers more opportunities to provide technical assistance to covered entities. In September 1992, one week after the publication of its final ADA rule, FTA issued the *Paratransit Plan Implementation Handbook*. FTA has also published procurement guides for accessible vehicles and sponsors research on accessibility systems that could be applied for use in transit. In 1993, DOT published *Americans with Disabilities Act Paratransit Eligibility Manual* in conjunction with a nationwide training program. In the fall of 1994, DOT will offer an updated paratransit manual and training course, and in the spring of 1995, a manual and training on public participation.

FCC has undertaken considerably less direct technical assistance than other enforcement agencies, in part because its enforcement responsibility is straightforward: to establish a national relay system. However, FCC requires common carriers and relay service providers to offer technical assistance in their service areas. FCC published a *Handbook of State Telecommunications Relay Services* in January 1992 and issued a second edition, *The TRS Directory*, in October 1993.

The Access Board prepares technical manuals, technical bulletins, videos, and compliance checklist. Between 1991 and the middle of FY '93, it had responded to more than 50,000 phone calls, mailed out over 30,000 packages of information, and provided 188 training sessions.

The Job Accommodation Network (JAN) of the University of West Virginia receives $2 million from PCEPD, about half of PCEPD's annual budget. Before the ADA

was enacted, JAN advised employers about workplace accommodations. Since enactment, it has added two more toll-free numbers to assist employers in complying with Title I of the ADA. JAN currently answers about 7,000 calls per month, twice the number it received before the ADA.

How Effective Is Technical Assistance?

According to Bobby Silverstein, former staff director of the Senate Subcommittee on Disability Policy, the amount of technical assistance available is inadequate. Only a small fraction of the 666,000 businesses, the 5 million places of public accommodation, 80,000 state and local government entities, and the 49 million people with disabilities are aware of the agencies' technical assistance initiatives. A director of one NIDRR-funded center reported that, in 1994, his staff still encounters businesses, nonprofits, agencies, and state and local government agencies that are unaware of their ADA obligations. The federal government's major training effort targeted to people with disabilities—the $1.4 million contract to the Disability Rights Education Defense Fund (DREDF) from EEOC and DOJ—instructed 400 people to work as trainers. As of July 1994, the trainers had provided instruction to a total of 137,000 people—40,000 of them people with disabilities. This is only a small fraction of the 49 million people protected by the statute.

John Wodatch of DOJ says that, despite technical assistance, "large segments of the American business community, particularly small businesses, are still unaware of or only vaguely familiar with the requirements of the ADA." Wodatch cited the need for outreach to small business, minority and minority-language communities, and state and local governments. Efforts to "reach persons with disabilities with needed information are critical in order to raise the capacity for effective self-advocacy," he added.

Many people who have sought technical assistance from enforcement agencies report that they did not receive it promptly. They complain about spending long periods on toll-free ADA phone lines whose hours of operation are limited, and of waiting a long time to receive answers to their inquiries. A February 1994 study found that DOJ took an average of 98 days to respond to a letter requesting assistance. The quickest response time was 2 days and the longest was 456 days. In the summer of 1994, DOJ increased both the hours of daily on-line service and the number of ADA specialists responding to calls. An increase in the number of calls may occur after promotion of DOJ's phone number through public service announcements in the summer of 1994, followed by an IRS mailing to 5.9 million businesses.

DOT has been criticized for providing

only minimal technical assistance. Susan Schruth, acting director of the Office of Civil Rights of the Federal Transit Administration, described the ADA as a "momentous overlay" on the transportation industry. "It is a new way of doing business," she said, adding that it has been difficult to convey the idea that the ADA is a set of civil rights requirements, not an engineering code.

Bob Ashby of DOT, in contrast, says that the daily interaction between FTA and transit providers "provides probably the most thorough . . . technical assistance relationship between any Federal agency and any industry concerning the ADA." He notes, however, that technical assistance is lacking for the private sector of the industry, especially in response to frequent requests from over-the-road buses and companies providing taxi and shuttle services.

The task of providing technical assistance is complicated by misinformation about the ADA. According to Bobby Silverstein, "People still don't understand how flexible the law is . . . . If I get phone calls from 150 people concerned about the requirements of the ADA, 149 of them are comfortable about the law's requirements after we finish talking." Barbara Bode of the Council of Better Business Bureaus Foundation reported fear-mongering by people promoting themselves as "Certified ADA Consultants," capitalizing on fears among businesses about the requirements of the law. Paul Marchand of The Arc described a "mini-industry of people providing training in how to avoid compliance with the law."

In general, however, according to Marchand, "The federal government has done a good job; the question is, 'Is anybody listening? Is anybody interested?'" Others interviewed for this report noted that many businesses do not know what is available. Wendy Lechner of the National Federation of Independent Businesses, an organization representing small businesses, noted, "Lots of (our) people just don't know where to go for ADA technical assistance."

Some persons interviewed believe that many businesses do not pursue technical assistance because they are waiting to see how aggressive the federal government will be in enforcing the ADA. Barbara Bode reports that many small businesses tell her they are "just ducking and hoping that no one will notice." Concern about liability in hiring people with disabilities has also generated a response of "ADA minimalism," whereby businesses do as little as possible.

Some business organizations report their members' reluctance to pursue technical assistance from agencies that enforce the law. Susan Meisinger of the Society for Human Resources Management (SHRM) noted businesses' "real fear of talking to someone affiliated with the government.

There is a sense that every government office can determine your identification and keep tabs on your performance." Pat Morrissey, an expert on ADA implementation, concurred that "there is too much of an immediate risk in employment to rely on the advice of a technical assistance center. Large companies will seek advice from their general counsel's office or their professional association."

Technical assistance occurs most effectively between peers, some experts argue. Pat Morrissey noted that the "culture of large companies is privacy. They do not want to tell their business to an outside technical assistance center. But they will talk to trusted peers." A number of DOJ grants were based on this concept. For example, the agency funded the Building Owners and Managers Association (BOMA) to educate its members about the law. The Council of Better Business Bureaus received DOJ funds to promote voluntary compliance by working with businesses and disability organizations.

A June 1994 GAO study confirmed these impressions. GAO found that most business people familiar with the ADA had learned about it from their corporate headquarters and the media. Only 10 percent reported receiving ADA information directly from federal agencies.

The extent to which businesses are aware of and are utilizing the tax code provisions for the ADA is unknown. The Access Credit (Section 44 of the IRS code), enacted shortly after the ADA, allows small businesses credit against tax for 50 percent of eligible expenditures that exceed $250 but are not greater than $10,250. It is estimated that over 16 million firms are eligible to use the credit. At the time that the credit was enacted, the Section 190 deduction, available to businesses since 1976, was amended. The amount of the deduction allowed was lowered from $35,000 to $15,000 in order to offset potential new tax expenditures under the access credit. It is doubtful that any useful data about business utilization of these tax provisions will emerge because an amount deducted for Section 190 expenditures cannot be disaggregated from other deductions. Furthermore, the claim form for the Access Credit provides no place to describe the claim's purpose, such as reasonable accommodation or barrier removal.

The extent to which businesses are aware of the deduction and credit is unclear. An IRS official noted that the Section 190 deduction was virtually unknown until the ADA was enacted. PCEPD has developed a brochure about the tax provisions relevant to the ADA and the technical assistance centers offer tax information. The IRS enclosed DOJ and EEOC brochures about the ADA in three mailings to small businesses, but the agency has done no mailings to inform busi-

nesses of the access credit.

No systematic study has evaluated federal technical assistance. Reports from the field are mixed. Wendy Lechner of the National Federation of Independent Businesses noted that small businesses were utilizing JAN and were satisfied with that service. A DOJ analysis of letters found that most inquirers were satisfied with the responses they received. "For the federal government, in something as complicated and massive and new as this, I was impressed," said Paul Johnson, a Michigan architect who inquired about new construction of commercial office space.

In a July 1994 press briefing on the fourth anniversary of the enactment of the ADA, Attorney General Reno identified nine examples of local business people working with people with disabilities to comply with the law. "But," she said, "these stories continue to be the exception and not the rule."

The business community has persistently raised concerns about the vagueness of the law and has sought technical assistance for particular industries on applications of the law. Lechner reported that her members were often frustrated with DOJ responses. "Our members need more practical information, but what they get is formal responses," she said. David Capozzi of the Access Board noted: "Everyone knew there would be a learning curve, but we didn't anticipate the great desire for certainty. Covered entities want to do the right thing, but they are having a hard time getting specific timely answers."

Similarly, Susan Meisinger of SHRM commented on employers' difficulty in integrating the ADA with the requirements of related laws, such as workers' compensation, the Family and Medical Leave Act (FMLA), and the Occupational Safety and Hazards Act (OSHA). For example, she noted, the ADA and OSHA appear to have different standards of risk in determining safety in the workplace. Little technical assistance has been offered to assist businesses in understanding the overlap of requirements.

Some information about persistent problems of complying with the law can be deduced from the questions most frequently asked of providers of technical assistance. An analysis of queries received by DOJ noted that most questions concerned the availability of interpreters, particularly in medical settings such as doctors' offices. Other concerns were the use of modems on emergency telephone (dial 911) systems, parking, bathrooms, compliance by residential buildings, enforcement of the Act, and signage.

John Wodatch of DOJ listed a number of "particularly troublesome" problems: "failure of doctors to provide appropriate auxiliary aids, the denial by restaurants of access to persons using service animals, the refusal of dentists to treat individuals with HIV,

physical barriers to access at courthouses and town halls, and the failure by public entities to provide effective 911 emergency telephone service to TTY users."

The Southeast Disability and Business Technical Assistance Center (DBTAC) has also found that doctors, attorneys, and bankers believe that providing accessible communication is especially problematic. According to the agency's staff, these professionals resent the ADA obligation to provide effective communication, especially when interpreters are the solution.

The Public Access Section of DOJ chairs an ADA Technical Assistance Coordinating Committee, which has met four to six times per year since 1991. The committee reviews technical assistance materials to ensure accuracy and consistency and attempts to guarantee that federal technical assistance is cost effective. In FY '94, the section began developing a database of ADA materials and activities in order to generate a report by the attorney general on ADA technical assistance across the government.

David Esquith, project officer for the technical assistance centers at NIDRR, believes that interagency coordination is a distraction. "Interagency coordination takes time and energy away from doing your job," he said.

More pressing than coordination is the need for annual appropriations from Congress to finance technical assistance. As of July 1994, for example, no funds were included in either the House or Senate appropriations bills for ADA technical assistance by DOJ via grants and contracts.

Federal technical assistance, however, could create the perception that the government is more interested in technical assistance than in strong enforcement. Curtis Decker, executive director of the National Association of Protection and Advocacy Systems, worries about this situation. The appearance of imbalance may be aggravated when a major source of technical assistance is the lead enforcement agency, the Department of Justice. John Dunne, assistant attorney general for civil rights in the Bush Administration, described the department's approach to the ADA as "educate and negotiate, and litigate only when compliance is refused." Advocates are concerned that covered entities may only hear the first part of that slogan. Despite the claims by Acting Assistant Attorney General James Turner in 1993 that "jawboning as the main enforcement tool is coming to an end," DOJ has not fully used its enforcement authority.

One contractor for a DOJ technical assistance project, Barbara Bode of the Council of Better Business Bureaus Foundation, reported hearing business leaders claim that they were not complying because they believe the law would never be

enforced. John Wodatch of DOJ also cited a "wait and see" attitude as a main obstacle to ADA compliance.

Nevertheless, demand for technical assistance will continue as the requirements of the law continue to be delineated. Commenting on a draft of this report, DOJ officials wrote that technical assistance and enforcement are parallel approaches to achieving widespread compliance with the ADA. Over time, lawsuits provide the incentive for entities to seek technical assistance.

Moreover, federal agencies hope that technical assistance will decrease the likelihood of complaints and litigation. Disability rights activist Pat Wright of DREDF notes that "as the technical assistance funds dry up, litigation will increase."

A person with a disability who encounters discrimination may file a complaint with either the appropriate federal agency or its state or local designee if there is one. All four enforcement agencies (EEOC, DOJ, FCC, and DOT) have complaint processes in place. Complainants about discrimination in employment must go through EEOC's process. Persons with complaints about discrimination in public accommodations or by state and local government (enforced by DOJ) may go directly to court, bypassing administrative procedures. In the case of employment, an individual may proceed to court within 90 days of receiving a "right-to-sue" letter from the EEOC.

Complainants must file with the appropriate agency within 180 days of the alleged discriminatory act. Complaints regarding public accommodations and state and local government not taken to court must be filed directly with the DOJ. DOJ may refer complaints about state and local governments to other federal agencies for processing. In states or localities where there is no recognized state or local Fair Employment Practices Agency (FEPA), charges of ADA discrimination must be filed with EEOC within 180 days of the alleged date of violation. If there is a FEPA with ADA jurisdiction, charges must be filed with EEOC within 300 days of the discriminatory act. Complaints about transportation may be filed directly with DOT. Telecommunications complaints related to intrastate problems are filed with state administrators of telecommunications relay services. Complaints about interstate operations are filed at the federal level with the FCC.

A federal investigation of a complaint generally involves the following four steps:

1. An interview with the charging party to determine jurisdiction (e.g., is the individual a person with a disability? Is the alleged discriminator a covered entity under the ADA?).
2. Notification of the covered entity that a complaint has been made.
3. Collection of information about the alleged incident.
4. Disposition of the complaint.

This process need not be completed if the charging party decides to pursue the complaint privately through the courts.

Who Is Complaining?

During the first 22 months of enforcement, EEOC and DOJ received the bulk of complaints. From 26 July 1992 to 31 May 1994, EEOC received approximately 28,000 complaints under Title I. In the first two and a half years of enforcement for public accommodations, from January 1992 to July 1994, DOJ received almost 3,000 complaints. In the first two and a half years of enforcement

for state and local government. from January 1992 to July 1994. DOJ received just under 3,000 complaints.

Considerably fewer complaints have been filed with FCC and DOT. As of 1 June 1994, FCC had received only four. As of 21 July 1994, DOT reported receiving a total of 363 complaints; however, DOJ reported having referred 414 complaints to DOT.

EEOC has undertaken the most detailed ADA complaint analysis. Back impairments constitute the largest category of persons making complaints, at 20 percent, followed by neurological impairments at 13 percent, emotional/psychiatric impairments at 11 percent, and extremities at 6 percent. Other disability categories represent 5 percent or less of received complaints.

The ADA violation most often cited in the complaints (50 percent) is inappropriate discharge. Others alleged, in rank order, are failure to provide reasonable accommodation (25 percent), discrimination in hiring (12 percent), harassment (10 percent), employer discipline (7 percent), and layoff (5 percent). Additional categories comprise less than 5 percent of the complaints filed.

Employment complaints have been filed from every state in the union. Kansas tops the list with 40.9 complaints per 100,000 members of the civilian labor force, followed by the District of Columbia (36.2), New Mexico (30.7), Colorado (22.8), and Arkansas (17.1).

Back impairments top the list of the disability categories, and about half of the complaints are made at the point of firing, leading some advocates to worry that the ADA is not being sufficiently used by the "truly disabled." Furthermore, they claim, the ADA does not appear to be making a difference for persons who are not currently working, and may make it even harder for those with significant disabilities to find employment. According to Erica Jones, director of the Pacific NIDRR technical assistance center, "There is a danger of the ADA being trivialized." Pat Wright of DREDF disagrees with this view. She sees political advantage in the apparent expansion of the traditional disability community. "The bigger the bus," she believes, "the better the benefits."

By the end of July 1994, DOJ had received 2,619 complaints under public accommodations and 2,722 complaints under state and local government. DOJ categorizes public accommodations complaints as follows: 62 percent are related to barrier removal; 23 percent to policies and procedures; and 11 percent to auxiliary aids and services, with 4 percent classified as "other." This distribution has remained steady. The department has received public accommodations complaints from every state, the District of Columbia, and Puerto Rico.

Of the 2,722 state and local government complaints DOJ received as of 26 July 1994, it referred 1,490 (55 percent) to other agencies, retaining 1,232 for its own investigation. Of the latter group, the largest category was inaccessible facilities, which logged 250 complaints, or 33 percent, followed by employment (160, or 21 percent), auxiliary aids (140, or 18 percent), and policies and practices (110, or 14 percent).

Thus EEOC has received ten times the number of complaints filed with DOJ. The reasons for the disparity are not clear. Perhaps persons whose employment is threatened feel a greater incentive to complain than do those who cannot enter a movie theater or use a dry cleaner. Perhaps most state and local governments, after 20 years of responsibility for complying with Section 504, stimulate fewer complaints. According to John Wodatch of DOJ, "State and local governments in general have . . . shown a surprising lack of awareness of the ADA's requirements and how to implement them."[45] People with disabilities may have lost faith in state and local government facilities and services ever becoming accessible, and thus do not bother to file complaints. Moreover, because complainants against state and local governments and public accommodations can go directly to court, they may be turning less often to DOJ.

What Has Happened to Complaints?

As of 30 June 1994, EEOC had resolved 12,830 of the 29,720 ADA complaints received, or 43 percent of the total. EEOC dispose of the complaints as follows:

Disposition	*Percent*
Administrative closures	45
No cause	34
Withdrawal of complaint with benefit	11
Settlements	7
Unsuccessful conciliation	2
Conciliation	1

[Source: EEOC]

About 80 percent of the complaints resolved were either closed for administrative reasons or because "no cause" of discrimination was found. (Administrative reasons include lack of jurisdiction, failure of the charging party to qualify as a person with a disability or to cooperate, or the issuance of a requested "right-to-sue" letter.) A "no cause" determination does not prevent the complainant from proceeding to court. Sometimes "no cause" findings stem from lack of time and/or staff to undertake an extensive investigation that could lead to a different finding. Charging parties some-

times request a "right-to-sue" letter after initiating a complaint rather than waiting for an investigation. Backlogs of complaints at EEOC have been problematic for years and are increasing. EEOC's inventory of pending charges grew to 85,212 through March 1994, 21,547 more than the previous year. The average time to process a charge rose from 274 days to 293 days in the same period. Cases that result in "unsuccessful conciliation" (2 percent) may be taken up by EEOC for litigation.

EEOC commissioners are authorized to bring charges themselves against covered entities, usually when they discover a discriminatory pattern or practice in a business. As of July 1994, EEOC had initiated only one ADA charge.

DOJ refers most of its incoming complaints against state and local governments to other federal agencies with jurisdiction. Of the 2,722 complaints it had received by late July 1994, over half (1,490) were referred to seven other federal agencies for investigation: Department of Education (456); Department of Transportation (414); Department of Health and Human Services (321); Department of the Interior (116); Department of Housing and Urban Development (86); Department of Labor (86); Department of Agriculture (11).

DOJ monitors the complaints it refers to other agencies by a two-step process. First, the agency must inform DOJ that it has accepted, or rejected, the complaint within 30 days of the referral, and it then must inform DOJ of the complaint's disposition. Some agencies do not respond promptly. For example, DOT has notified DOJ that it will accept 116 of the 414 referred complaints and has informed DOJ, as well, that it closed 28 of the cases. The status of the 298 referred but not officially accepted, however, is uncertain.

Of the 1,232 complaints against state and local government retained by DOJ as of July 1994, 77 percent were under investigation and 23 percent had been resolved as follows:

Resolution	*Number*
Closed (for both administrative and substantive reasons)	285
Letters of findings	37
Issues resolved	73
Formal settlement letters	16
Referred for litigation	1

[Source: DOJ]

DOJ received 2,649 complaints by July 1994 under the public accommodations title of the ADA. Half of these were either never

opened or were closed for administrative reasons (such as lack of jurisdiction or because the individual alleging discrimination did not have a disability). Less than 1 percent of complaints received to date have resulted in the individual with a disability obtaining relief. DOJ cites insufficient investigatory staff as the reason for not opening 40 percent of the complaints. Instead, DOJ staff have informed complainants that they may proceed directly to court. DOJ defines its primary ADA enforcement role as litigation in order to establish precedents and clarify the limits the ADA.

Of the 4 complaints received by FCC, two were resolved and two were still under investigation in February 1994. DOT was not able to provide information readily about the status of the complaints it had received. DOT does not appear to have an internal mechanism in place for tracking quickly the status of complaints.

How Effective Is the Complaint Process?
Critics charge that the complaint processes are complex, time-consuming, bureaucratic, and frustrating. Anecdotal evidence includes the case of a teacher with multiple sclerosis who complained about lack of accessibility in his school. After 17 months of letters and phone calls to more than 11 federal, state, and local agencies, the complainant began to question the usefulness of the law. According to a recent letter sent to Attorney General Janet Reno by the CCD and NORA Civil Rights Task Forces, "Reports from around the country indicate that DOJ is turning away complaints under ADA on a daily basis."

EEOC reports that the average complaint takes slightly less than ten months to process (293 days). Each EEOC investigator currently has a caseload of 108 complaints, more than twice the level of four years ago. This situation has likely worsened since 24 July 1994, when ADA coverage was extended to small businesses with more than 15 employees (it had been 25). To add to the frustration of advocates, only a small percentage of complaints has resulted in relief for complainants. EEOC data indicate that 11 percent of charges resulted in withdrawal of complaint with benefit, 7 percent of charges resulted in settlements, 2 percent in unsuccessful conciliation, and 1 percent in successful conciliation. Less than 11 percent of DOJ state and local government cases ended in resolution, and .6 percent of public accommodations cases resulted in relief being obtained.

If EEOC and DOJ continue to reject complaints, or to process them slowly, more complainants may pursue remedies through the courts. Such a transfer of enforcement demand to the court system would increase the backlog in courts and would be costly for

everyone involved. Increased recourse to litigation, moreover, could relegate EEOC and DOJ to secondary roles in ADA enforcement and policy development. On the other hand, people with disabilities, already disheartened by the sluggish response of federal agencies, may not file more lawsuits, either because they lack the funds or because there are not enough attorneys with ADA expertise.

Litigation

The federal government had filed or joined lawsuits in 35 court actions under the ADA, 23 by EEOC and 12 by DOJ, and participated as a friend of the court in an additional 13 cases (3 by EEOC and 10 by DOJ) as of July 1994. These cases comprise a tiny fraction of ADA litigation currently before the courts. EEOC and DOJ, however, have initiated and entered cases that raise important issues. EEOC, for example, has participated in cases concerning the provision of health insurance and other benefits to persons with HIV infection, discriminatory discharge from employment, failure to provide reasonable accommodation, and withdrawal of a job offer after a disability was revealed.

Issues in cases filed or joined by DOJ include accommodations for an individual with a learning disability when taking a state bar examination; the requirement of a psychological history before a candidate could receive medical licensing; readmission to graduate school by an individual with Tourette syndrome; the mandatory provision of auxiliary aids to students with hearing impairments when taking a national certified public accountant exam; the exclusion of persons who are blind from serving on juries; the refusal of dentists to treat persons with HIV; and the constitutionality of ADA itself. DOJ filed its first "pattern or practice discrimination" suit in December 1993. The DOJ suit challenges state statutes in Illinois that deny, on the basis of disability, eligibility for police pension funds and/or firefighter pension funds mandated by the state of Illinois. DOJ alleges that the ADA is violated by the denial of admission to the Illinois pension system of a police officer with diabetes who is employed by the City of Aurora Police Department and who has been performing his job successfully 8 years.

Successful litigants have received substantial relief. EEOC estimates that from July 1992 to October 1993, monetary benefits rendered under the ADA totaled approximately $7.1 million. This figure includes settlements, charges that were withdrawn with benefit, and conciliation agreements. In *EEOC et al. v. AIC Investigations, Ltd. et al.*, the jury awarded the plaintiffs $22,000 in back pay and $50,000 in compensatory damages. Both defendants were ordered to pay $250,000 in punitive damages; however, the court reduced the puni-

tive damages to $150,000. Similar data are not available from DOJ. However, settlements have involved financial payments: a hotel, for example, agreed to pay a complainant $10,000 in damages. Remedies in other settlements took the form of changes in the physical environment such as installation of ramps, posting of signs, training of staff, physical modification of hotel rooms, installation of accessible bathrooms, and changes in policies and procedures.

Other Enforcement Methods

Federal compliance reviews are another enforcement mechanism. In December 1992 DOJ undertook a compliance monitoring effort targeted to construction projects. DOJ notified contractors and architects in 15 states of the ADA's requirements for alterations and new construction, and it has reviewed as well as selected architectural plans from building projects across the country. This project was initiated because it is difficult for potential complainants to know, and thus object, when a building is about to be constructed or altered in a way that does not comply with ADA standards. As a result of its reviews, DOJ has opened additional investigations. DOT reported plans to begin monitoring how well recipients of federal funds comply with ADA requirements.

DOJ may certify that state or local laws or building codes meet or exceed the ADA's minimum accessibility requirements. As of July 1994, DOJ had received only 6 requests for certification: from Washington State, New Hampshire, New Mexico, Utah, Florida, and New York City. DOJ responded to Washington State's request for technical assistance by comparing its standards with those of the ADA's, and it rejected the New Hampshire request because the state wanted to certify a proposed, rather than an actual, building code. Requests from the other states and from New York City are being analyzed. Its work with organizations that devise model building codes, may soon enable DOJ to determine whether or not the model codes conform to the ADA.

Approval of plans, or program certification, is required in three areas of the ADA: telecommunications relay services, key stations for mass transit, and paratransit. All state programs for relay services were certified by November 1993. The FCC chose not to use authority to impose substantial fines against Oklahoma, which filed one month past the deadline, as the situation was resolved quickly.

In order to receive federal funds under the Federal Transit Act, transit authorities must submit plans to make key stations accessible and to provide paratransit to DOT. The Federal Transit Administration contracted out the review process for determining the acceptability of plans. Several

were initially disapproved and some had to be resubmitted two or three times before receiving approval.

In June 1994 DOT issued a letter that could have been a first step toward terminating federal funds for ADA noncompliance, but instead the agency backed off. DOT Secretary Federico Peña refused a request from the Washington, DC, METRO to lift the ADA requirement to replace the rubber strips on subway platform edges with raised bumps (often called "detectible warnings") to warn riders who are blind. In July 1994, however, Secretary Peña gave METRO a four-to-six month exemption period so that it could test alternatives to the strips.

An alternative to lawsuits authorized by Section 513 of the ADA is alternative dispute resolution (ADR). ADR includes settlement negotiations, conciliation, facilitation, mediation, fact finding, minitrials, and arbitration. In 1990 Congress enacted the Administrative Dispute Resolution Act (P.L. 101–552), which encouraged federal agencies to utilize consensual methods. This law was prompted in part by the ongoing backlog of complaints at EEOC and in part by concern that administrative proceedings had become too formal and lengthy.

Little information exists on the extent to which consensual methods are being utilized to resolve ADA complaints. DREDF, in a training project jointly funded by EEOC, reported that it attempted 748 ADR negotiations to resolve ADA-related disputes. According to a draft EEOC report, 400 of these negotiations led to successful resolutions.

Finally, the Protection and Advocacy System (P&As), established in 1975 to assist (P&As) people with developmental and other disabilities, has undertaken an aggressive ADA compliance campaign in a number of states. Curtis Decker, executive director of the National Association of Protection and Advocacy Systems, has proposed that DOJ grant the P&A system "deemed status" to enforce the ADA on behalf of DOJ. In phase I of its campaign in Texas, for example, Advocacy Inc. filed 53 lawsuits alleging ADA violations under Titles I, II, and III. These suits targeted health care providers, convenience stores, attorneys' offices, retail stores, theaters, restaurants, banks, and day care centers. Sixty-eight businesses voluntarily complied.

Another result of the ADA compliance campaign was a negotiated settlement between the state lottery agency and Advocacy Inc. Under threat of a lawsuit alleging that several stores selling lottery tickets were inaccessible, the state agreed to inspect lottery outlets for ADA compliance at a rate of 500 per month. A store that fails to comply with the ADA could lose its license to sell lottery tickets, worth from $30,000 to $50,000 in sales per year for each store.

P & A compliance initiatives in other states include one by the Arizona system to monitor self-evaluation and transition plans required by state and local government, another by the Oklahoma system to guarantee that people with hearing impairments are provided with sign language interpreters in court proceedings, and still another by the Pennsylvania system to improve access to public accommodations.

Covered entities have repeatedly expressed concerns about federal compliance mechanisms. They want to know the exact requirements for compliance and when they can be certain they have attained it.[37] Because the ADA is a civil rights law, enforced when individuals complain, there is no mechanism to provide them with such security. Although parts of the ADA resemble a building code, for instance, the statute is enforced for the most part by investigation of complaints. State or local building-code officials do not have the authority to certify that a building's plans are in compliance.

Wendy Lechner of NFIB noted that her organization has a similar problem with OSHA requirements. Small businesses want a way to know whether or not they are in compliance — before a complaint is made. Her organization is promoting the use of independent inspectors to provide "no-fault, on-site inspection," distinct from any enforcement effort. The program uses ombudsmen who would, at the request of a business, offer guidance on compliance. Over time, she believes, the result would be less litigation and more compliance. NFIB is pursuing this strategy for environmental law requirements and would like to see it extended to the ADA.

Clarifying Policy

EEOC has taken the lead to date in issuing policy guidance to clarify statutory requirements. As of July 1994, the EEOC had issued guidance documents in two areas: health insurance and preemployment inquiries. On health insurance, the commission instructs its investigators that, as a general rule, employers must demonstrate that a disability-based distinction is justified by the risks or costs associated with the disability.

EEOC guidance on preemployment inquiries and medical examinations is controversial. One business organization, the Society for Human Resources Management (SHRM), says that the prohibited inquiries are "inconsistent with the legislative history of the ADA, the implementing regulations, and the technical assistance manual on the subject of preemployment inquiries regarding an applicant's request for reasonable accommodation." SHRM believes that it may be necessary to discuss the nature of a requested accommodation at the preemployment stage in order to determine

whether the candidate is "qualified" under the ADA.

EEOC is likely to issue policy guidance for the application of the ADA to people with psychiatric disabilities in the near future. Problems in accommodating people with psychiatric disabilities in the workplace are documented in the 1994 OTA report, *Psychiatric Disabilities, Employment, and the ADA*. EEOC says that other issues likely to be addressed by subsequent policy guidance include the definitions of disability and of "qualified," the relation between reasonable accommodation and undue hardship, the role of collective bargaining agreements in determining reasonable accommodations, and the question of whether psychological testing can be considered a medical inquiry. In defining disability, EEOC has filed a brief arguing that obesity, in some circumstances, may be considered a disability.

As of July 1994, DOJ had not issued any explicit policy guidance, but had responded to a number of inquiries and established a set of "core policy letters." Disability interest groups have requested that the assistant attorney general for civil rights take the lead in all disability rights policy development, noting that policy conflicts have occurred, even within DOJ. In one situation, attorneys in the civil division of DOJ differed with civil rights attorneys on the position the federal government should take in an ADA case. The civil rights division wanted to file a brief on behalf of the plaintiff; the civil division did not. A senior Clinton appointee decided that the civil rights division would not file the brief.

Congress Applies the ADA to Itself

A controversial issue has been on application of the ADA to Congress itself. Breaking the tradition of not applying civil rights statutes to itself, Section 509 of the statute directs its implementation within Congress, but with only partial application. The 21,000 congressional employees are not entitled equally to the remedies and enforcement procedures of employees of covered entities, but, rather, to remedies and procedures established by Congress itself.

Implementation activities have taken place in both bodies. The House and the Senate Offices of Fair Employment Practices have received inquiries and complaints under the ADA, but the number is not available. Both offices have distributed information to members' offices and to congressional staff about protections of the ADA and complaint procedures. In the Senate, the Office of the Sergeant at Arms has established a policy to provide and pay for reasonable accommodations for employees with disabilities. In the House, the Committee on House Administration has established a procedure for providing rea-

sonable accommodations.

Other activities designed to promote ADA compliance have occurred in both bodies. In the House, for example, the Office of the Clerk offers braille and large-print capabilities for its members to use when communicating with constituents. The House of Representatives provides closed captioning for floor proceedings and offers a closed-caption monitor in its gallery to assist visitors who may be hearing impaired or deaf.

The Architect of the Capitol conducted an accessibility survey in 1993 that yielded 2,053 ADA violations in 532 public and restricted spaces. The cost of rectifying these violations was estimated to be $4.4 million, although some may be exempt from ADA requirements because the Capitol is a historic building. The Office of the Architect reports that, since passage of the ADA, renovation and new construction projects have been designed and constructed to comply with the ADA. In FY '94 Congress appropriated $300,000 to make the Capitol building more accessible, an additional $25,000 for the grounds – primarily parking spaces and curb cuts – and $400,000 to increase the accessibility of House office buildings (but nothing for Senate office buildings). Renovations currently underway will result in a fully accessible subway connecting the Senate and Capitol.

Some implementation activities may have been inspired by Senator John McCain (R-AZ), who took the floor to assail the Senate's lack of compliance with the ADA on 3 March 1992. He particularly noted the lack of parking spaces for people with disabilities and the inaccessibility of congressional special services offices in the Capitol.

What Advocates Say About Enforcement

Some advocates say the Administration is equivocal about enforcing the ADA. "We lost a year with the ADA because President Clinton did not make ADA political appointments," noted Pat Wright. One key position with responsibility for enforcement of the ADA, the assistant attorney general for civil rights, was filled in the spring of 1994. As of September 1994, another key post, EEOC chairperson, was not filled until the fall of 1994.

The Administration's empathy for state and local government's complaints about "unfunded mandates" has also raised concerns about its commitment to ADA enforcement. In his report on reinventing government, for example, Vice President Gore said that, despite the noble goals of many programs, such as "increased public access for disabled citizens," they unduly burden state and local governments unless accompanied by federal funding. The report calls for a review of federal agency regula-

tions in order to reduce mandates that interfere with effective service delivery. Executive Order 12875, issued 26 October 1993, directs federal agencies to stop promulgating regulations that create unfunded mandates for state and local governments and to be more flexible in offering state and local waivers.

Other disability rights leaders worry that aggressive enforcement may engender a backlash by businesses that would perhaps attract public sympathy. Recent reports of two restaurants closing because of the unmanageable cost of meeting accessibility requirements have increased what some view as the backlash potential. Trader Vic's flagship restaurant in San Francisco recently closed for renovations in order to comply with the ADA. Some speculate that the expense of these renovations will prevent the restaurant from reopening. A lawsuit filed by Disabled Rights Advocates of Oakland resulted in the closing of Max's Eatz because, its owner claimed, of the expense of becoming accessible. One of the plaintiffs, Linne Yasumoto, responded, "Max's was violating state access codes that were over 20 years old."

A supporter of the ADA, David Pinkus of Small Business United of Texas, expressed concern about the ADA compliance campaign conducted by Advocacy, Inc. "If other people start doing what Advocacy has done, there will be a groundswell of opposition," he said. A report on *NBC Nightly News* (16 May 1994) exemplifies the shaping of public sentiment. The report featured two lawsuits. One is being brought against Squaw Valley by a woman who uses a wheelchair and wants the owners to make the ski lifts accessible. The other was filed by a woman who is obese and claims that she is entitled to bring her own chair to the movie theater. The report stated that there were 15,000 similar potential court cases, raising questions about the price of accommodations for everyone who might seek them under the law.

President Clinton, Attorney General Reno, and now Assistant Attorney General for Civil Rights, Deval Patrick have, however, promised strong enforcement of the ADA. At an ADA anniversary celebration in 1993, Reno said, "We will take people to court when they thumb their nose at us." Tony Coelho, the new chair of the President's Committee on Employment of People with Disabilities, former congressman, and chief sponsor of the ADA, called for a "no excuses" approach to ADA enforcement. "ADA is a Civil Rights Act!" he said. "Compliance is not optional."

Most disability rights activists do not have high expectations of the federal government. Paul Marchand says, "The federal government will never fully enforce this law.

and we really can't expect them to." Pat Wright of DREDF says she "didn't ever think the federal government could accomplish full enforcement of the ADA, especially with the current fiscal situation." Both believe that there will never be enough staff to enforce the law fully. Wright says that even when adequate staff were available, other civil rights laws were not fully enforced: "We had to sue the Department of Health, Education, and Welfare to have the Adams Order (a school desegregation mandate) enforced. The result was a time frame for processing complaints." "Even if we tripled enforcement staff," notes Paul Marchand of The Arc, "there will always be backlogs and many cases that will never see the light of day." Marchand and Wright believe that full enforcement of the law will come when all parties are fully participating: people with disabilities, publicly funded legal services, and the private bar.

Evaluating the Implementation of ADA

There has been little systematic assessment of either implementation of the ADA or its impact. Disability interest groups have generally opposed funding for ADA-related research, preferring to see scarce resources targeted to technical assistance and enforcement rather than to the "evaluation" of civil rights. Statistics are, however, readily available about progress in such related areas as voting rights for racial minorities, desegregation in schools, and equal employment for racial minorities. EEOC regularly surveys businesses to measure national progress in equal employment for women, racial and ethnic minorities, and elderly people. Yet there are no surveys to measure the changes in employment among people with disabilities.

Disability researchers sometimes struggle with conflicting roles as analysts and advocates. Disability research raises controversial issues of method and data collection. For example, the EEOC, in a pilot test survey of businesses, encountered numerous obstacles, many related to the definition of disability and individuals' willingness to self-identify. Moreover, it is illegal for employers to ask employees if they have disabilities under the ADA.

Five studies about the ADA have been conducted by agencies of Congress, three by the General Accounting Office (GAO), two by the Office of Technology Assessment (OTA). In May 1993, GAO issued its first report and, in June 1994, its second report in response to a request from Congressman Owens to evaluate the long-term impact of the ADA. The 1993 study concluded that although most business and government facilities were accessible, a number of important barriers remained, including business owners' ignorance of the law. The

1994 study noted steady improvement in both accessibility and awareness during the initial 15 months following passage of the ADA, but recommended continuing educational outreach and technical assistance, as well as regular monitoring by Congress. A third report by GAO estimated that the cost of conforming to the paratransit requirements in the ADA would be approximately $920 million per year through 1996.

OTA studied the access of people with disabilities to over-the-road buses and the employment of people with psychiatric disabilities. This study, which was required in the statute, provides information for DOT to use in its regulations about the demand for accessible over-the-road bus service, current and potential technologies, costs of implementation, and impact on the industry. The study of psychiatric disabilities, requested by Senator Kennedy and issued in March 1994, compares the employment provisions of the ADA with current knowledge about psychiatric disabilities, and reviews federal enforcement, technical assistance, and research related to the ADA, employment, and psychiatric disabilities.

Currently no federal agency routinely gathers population-based information about the impact of the ADA. Data about disability and employment status can, however, be culled from surveys designed for other purposes (e.g., the Current Population Survey [CPS] and the National Health Interview Survey [NHIS]). The NHIS is adding a supplement for 1994 and 1995 that will ask comprehensive questions on disability of approximately 250,000 people nationwide, but it represents a one-time effort.

The Job Accommodation Network (JAN) routinely collects information from users of the service in order to evaluate its effectiveness. When completing the question on the JAN survey about the cost of accommodation, respondents consistently report the amount to be less than $500 for most employees with disabilities. The 1993 GAO study of public accommodations found few businesses reporting burdens and many reporting benefits associated with barrier removal.

The federal government through NIDRR has funded $400,000 worth of ADA-related research. Grants include an exploratory analysis of factors affecting ADA's implementation and a project to design an enhanced technical assistance program to provide companies with information and activities that will lead to ADA compliance.

The ADA, in sum, is a major civil rights law with broad implications for the social and economic life of our country, but its effects will not be known, at least not at the current level of research.

FINDINGS

The information presented in this report leads the author to the following conclusions:

1. The federal bureaucracy has developed generally effective procedures and systems to perform its responsibilities to implement the Act.

2. A cadre of political appointees with disabilities, federal employees with disabilities, and federal employees who are disability advocates form a network of support for the ADA within government.

3. The federal government has yet to enforce the ADA fully.

4. The ADA is at risk of being accorded lower priority than it has had.

5. Early implementation has emphasized provision of technical assistance to both covered entities and people with disabilities; its effectiveness, however, is unknown.

6. The federal role involves multiple bureaucracies playing numerous roles that may be confusing to a covered entity seeking information or to a person with a disability seeking relief from discrimination.

7. Implementation of the ADA within Congress is underway, though difficult to assess.

8. Limits on research and data collection impede the ability to evaluate implementation strategies and assess the long-term impact of the ADA.

AUTHOR'S RECOMMENDATIONS

Keeping the promise of the ADA requires action by Congress, the Administration and its executive agencies, disability advocacy groups, and covered entities. The following recommendations, solely those of the author, are directed to each of these four groups.

Congress

1. *Retain the current statute without amendment.*

   The ADA is only four years old. Many of its provisions have been in effect less than two years. Concerns expressed by the business community about the vagueness of the law's requirements appear to be diminishing as businesses gain experience in complying with the law.

2. *Establish minimal enforcement standards, including timeliness for complaint processing and closure. Adequate resources should be allocated to EEOC, DOJ, and DOT so that the standards can be met.*

   As long as executive agencies are not fully enforcing the law, its impact will be compromised. When individuals with disabilities submit complaints to federal enforcement agencies, they should be assured that those complaints will be processed in a timely manner. If a determination is made that all complaints will not be investigated by a federal agency, alternatives should be developed. Perhaps some complaints could be referred to U.S. attorneys for investigation.

   The setting of timelines to be met in the complaint investigation process and of standards to be utilized in compliance monitoring, as well as other measures of enforcement efforts, would enable Congress to monitor closely enforcement of the law. Such standards would also provide outcomes that agencies could use to determine staffing and resource needs.

3. *Appropriate funds to the Civil Rights Division of the Department of Justice for a comprehensive ADA public awareness/education campaign. The campaign should be developed and coordinated with EEOC, DOT, FCC, Access Board, NIDRR, NCD, PCEPD, and other relevant federal agencies.*

   Public awareness of the ADA is limited, as is public understanding of disability rights. The federal government's massive public awareness efforts for HIV/AIDS should serve as a model for a comparable ADA effort. Enterprises like the three toll-free ADA information numbers and the multiple publication dissemination efforts, for example, could be consolidated to form a central ADA information clearinghouse.

4. *Designate an internal ADA coordinator for each body and provide for an independent assessment of progress.*

Without designated responsibility for coordination or oversight, it is difficult to discern what is actually occurring. A mechanism for independent assessment of internal congressional implementation would provide an opportunity to clarify the status of its efforts.

The Administration

1. *Devise and carry out a comprehensive implementation plan that includes strong enforcement, technical assistance; and an aggressive public awareness campaign.*

Federal officials should consider means of utilizing both the Protection and Advocacy Systems in each state and the U.S. attorneys to enforce the ADA. Planners should also consider enforcement strategies that would utilize existing state and local certification and enforcement mechanisms.

The interplay between technical assistance and enforcement should be considered in the development of the plan. One area, for example, the use of communication aids and services in health care settings, could be targeted for technical assistance and then closely monitored for compliance.

The strategic plan should address the desire of businesses to be more certain of their compliance status. Federal officials should explore the possibility of developing an inspection mechanism that is separate from enforcement. An aggressive effort to assess model building codes for ADA compliance would also help relieve the doubts of covered entities about their status.

Executive Agencies

1. *Ensure effective implementation of the comprehensive plan across the federal government.*

The Office of the Assistant Attorney General for Civil Rights should be known as the headquarters for ADA implementation. The Office of the Assistant Attorney General should work with all relevant federal agencies to determine areas of policy that need to be clarified and to coordinate the development and dissemination of such clarification. With other federal agencies, it should examine means of simplifying and clarifying complaint jurisdiction and processes for the ADA.

2. *Appoint an ADA coordinator in the Department of Transportation to ensure internal coordination and implementation of ADA responsibilities and effective communication with other agencies and the public.*

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The ADA coordinator should ensure effective monitoring of the status of ADA complaints, ongoing communication with DOJ about referred ADA complaints, mechanisms to cross-check monitoring and enforcement efforts across departmental divisions, and technical assistance to respond to emerging needs.

3. *Evaluate all government funded and conducted technical assistance efforts and then develop a second generation of technical assistance to be part of a comprehensive implementation plan.*

After spending well over $40 million to provide technical assistance, federal agencies have accrued considerable descriptive data about their efforts. Both covered entities and people with disabilities who have been the recipients of technical assistance should be surveyed about its usefulness. The organization of technical assistance efforts both within federal agencies and through grants and contracts should be evaluated.

4. *Devise a research agenda to (a) determine effective implementation techniques and strategies and (b) monitor the changes in status of people with disabilities.*

An ADA research agenda would include studies of ADA implementation strategies in different sectors. Population-based data collection is necessary to determine changes and trends in the employment, economic, and social status of people with disabilities. An initial survey of people with disabilities should establish a baseline for follow-up surveys. EEOC should continue to develop a survey of people with disabilities in the workplace.

5. *Assign the U.S. Commission on Civil Rights or the National Council on Disability to monitor the implementation of the ADA and routinely report to the President and the Congress.*

No national entity is overseeing the implementation of the ADA. Although the NCD initiated such an effort with the ADA Watch, that appears unlikely to continue. Multiple federal agencies, sectors of society, and committees of Congress have ADA responsibilities, but no one entity has responsibility for monitoring and assessing overall implementation. Such an effort will enhance accountability and visibility for ADA implementation.

Disability Advocacy Groups

1. *Monitor more aggressively the federal government's implementation and enforcement of the ADA.*

2. *Seek greater public support for the goals of the ADA.*

3. *Study the implementation and impact of ADA and propose a research agenda to the federal government.*

Covered Entities

1. *Publicize exemplary practices, procedures, industries, and businesses that are successfully implementing the ADA and solving problems.*

2. *Use national trade and professional organizations to solve problems and share information about effective mechanisms and strategies for making the promise of the ADA a reality.*

3. *Initiate local events to raise public consciousness and support.*

NOTES

The Politics and the Players

p. 1 *"Let the shameful wall:* Bush 1990

1 *"We must fight to:* Hoyer 1990

1 *"a promise to be kept:* Dart 1993

1 *"Administration won't aggressively:* Personal communication, Anonymous 1994

1 *"unprecedented attacks":* Harkin 1994

1 *"one area where there:* Dole 1994

1 *Fifty percent of people:* Lou Harris and Associates, Inc. 1994

2 *"based in substantial part:* BNA, August 1992

2 *A 1991 poll:* NOD 1991

2 *A 1992 Gallup poll:* Gallup Organization 1992

2 *A 1993 Harris poll:* NOD 1993

2 *Of those who were:* GAO 1994

2 *A 1991 Lou Harris:* NOD Summer 1993

2 *For example, 92%:* NOD Summer 1993

2 *56% agreed:* NOD 1991

2 *"gone too far:* NBC 1994; Associated Press, 1 March 1994; Hokubei Maipichi, Inc., 5 March 1994

4 *In the Coordination and:* Personal communications; J. Wodatch, Office of the Americans with Disabilities Act, Civil Rights Division, 1993, and S. Oneglia, Coordination and Review Section, Civil Rights Division, 1993

4 *Investigators in field offices:* OTA 1994

5 *Most departments immediately issued:* NCD 1993

Technical Assistance Precedes Enforcement

8 *In the late 1970s:* Harkin 1993

9 *The organizations that carry:* Abt Associates 1993

11 *A director of one NIDRR:* Personal communication, E. Jones, Pacific DBTAC, 1994

11 *"large segments of the:* Wodatch 1994

11 *"reach persons with disabilities:* Wodatch 1994

11 *The quickest response time:* BNA, February 1994

12 *"provides probably the most:* Personal communication, R. Ashby, Department of Transportation, 1994

12 *Barbara Bode of the Council:* BNA, February 1992

12 *"Lots of (our) people:* Author interview with Lechner

12 *"just ducking and hoping:* Author interview with Bode

12 *Concern about liability:* Jones 1993

13 *"there is too much:* Author interview with Morrissey

14 *"For the federal government:* Johnson, as quoted in BNA ADA Manual, February 1994

14 *"these stories continue:* Reno 1994

14 *The business community has:* NCD 1993

14 *"Our members need more:* Lechner 1992

14 *"Everyone knew there would:* Author interview with Capozzi

14 *An analysis of queries:* BNA, February 1994

14 *Other concerns were:* BNA, February 1994

14 *"failure of doctors to:* Wodatch 1994

15 *According to the agency's:* Personal communication, Southeast DBTAC 1993

15 *"educate and negotiate:* Dunne 1992

15 *"jawboning as the main:* BNA, August 1993

16 *John Wodatch of the DOJ:* Wodatch 1994

Enforcement

18 *[Impairment categories of persons filing complaints]:* Personal communication, EEOC 1994

18 *[Alleged violations categories]:* Personal communication, EEOC 1994

18 *[States with the most complaints]:* BNA, June 1993

18 *By the end of July 1994:* Personal communication, DOJ 1994

18 *This distribution remained:* DOJ, October 1993

18 *The department has received:* DOJ, October 1993

19 *"State and local governments:* Wodatch 1994

19 *[EEOC disposal of complaints]:* Personal communication, EEOC 1994

20 *The average time to:* Personal communication, EEOC 1994

20 *[DOJ resolution of complaints]:* Personal communication, DOJ 1994

21 *DOJ defines its primary:* Personal communication, DOJ 1994

21 *After 17 months of letters:* Matthew 1993

21 *"Reports from around the country:* CCD Rights Task Force and NORA Civil Rights Task Force 1993

22 *DOJ alleges that:* Wodatch 1994

24 *In July 1994, however:* Peña 1994

24 *This law was prompted:* LRP Publications 1993

24 *According to DOJ officials:* Personal communication, DOJ 1994

25 *P & A compliance initiatives:* NAPAS 1993

25 *They want to know:* NCD 1993

25 *State or local:* BOMA 1994

25 *SHRM believes that it:* Meisinger 1994

26 *EEOC is likely to:* Mastroianni 1994

26 *Disability interest groups:* CCD Rights Task Force and NORA Civil Rights Task Force 1993

26 *A senior Clinton appointee:* American

Rehabilitation Association 1993

27 *Some implementation activities:* McCain 1992

27 *"increased public access for:* Gore 1993

27 *The report calls for:* Gore 1993

28 *Trader Vic's flagship restaurant:* Associated Press, 1 March 1994

28 *"Max's was violating state:* Hokubei Maipichi, Inc., 5 March 1994

28 *"If other people start:* LRP Publications 1994

28 *The report stated that:* NBC 1994

29 *Statistics are, however:* Scher & Button 1984

29 *desegregation in schools:* Bullock 1984

29 *and equal employment:* Rodgers 1984

29 *Disability research raises:* Bowe 1993; Brown 1993; Hahn 1993; LaPlante 1993; Kirchner 1993; National Council on Disability 1992; Pfeiffer 1993; Scotch 1993; Zola 1993

29 *The 1993 study:* GAO May 1993

29 *The 1994 study:* GAO June 1994

30 *A third report by:* GAO March 1994

30 *This study, which was:* OTA 1993

30 *The study of psychiatric:* OTA 1994

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OTHER PUBLICATIONS FROM THE FUND

The following reports are available without charge from the Milbank Memorial Fund:

The States That Could Not Wait: Lessons for Health Reform from Florida, Hawaii, Minnesota, Oregon, and Vermont
by Harry Nelson
1993 19 Pages

Setting New Priorities in Health Care
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